

**AMENDMENT 1 TO  
DEVELOPER'S PUBLIC REPORT  
FOR A CONDOMINIUM**

CONDOMINIUM PROJECT NAME:	HONOKAHUA BEACH HOTEL
PROJECT ADDRESS:	One Ritz Carlton Drive Lahaina, Hawaii 96761
REGISTRATION NUMBER:	6403 (conversion)
EFFECTIVE DATE OF REPORT:	<b>February 27, 2009</b>
THIS AMENDMENT:	<input checked="" type="checkbox"/> Must be read together with <input type="checkbox"/> Developer's Public Report dated _____ <input checked="" type="checkbox"/> Amended Report dated <u>March 14, 2008</u>  <input type="checkbox"/> Supersedes all prior amendments: Includes all prior amendment(s) and must be read together with <input type="checkbox"/> Developer's Public Report dated _____ <input type="checkbox"/> Amended Report dated _____
DEVELOPER(S):	W2005 Kapalua/Gengate Hotel Realty, L.L.C.

**Preparation of this Amendment**

The Developer prepared this amendment pursuant to the Condominium Property Act, Section 514B-56, Hawaii Revised Statutes (HRS), as amended from time to time. Section 514B-56, HRS, requires that after the Commission has issued an effective date for the Developer's Public Report, if there are any changes, either material or pertinent changes, or both, regarding the information contained in or omitted from the Developer's Public Report, or if the developer desires to update or change the information set forth in the Developer's Public Report, the developer shall immediately submit to the Commission an amendment to the Developer's Public Report or an amended Developer's Public Report clearly reflecting the change, together with such supporting information as may be required by the Commission, to update the information contained in the Developer's Public Report.

The law defines "material change" as used in parts IV and V of Chapter 514B, HRS means any change that directly, substantially, and adversely affects the use or value of (1) A purchaser's unit or appurtenant limited common elements; or (2) Those amenities of the project available for the purchaser's use.

The law defines "pertinent change" to mean, as determined by the commission, a change not previously disclosed in the most recent public report that renders the information contained in the public report or in any disclosure statement inaccurate, including, but not limited to (1) The size, construction materials, location, or permitted use of a unit or its appurtenant limited common element; (2) The size, use, location, or construction materials of the common elements of the project; or (3) The common interest appurtenant to the unit. A pertinent change does not necessarily constitute a material change.

The filing of an amendment to the Developer's Public Report or an amended Developers Public Report, in and of itself, shall not be grounds for a purchaser to cancel or rescind a sales contract. A purchaser's right to cancel or rescind a sales contract shall be governed by sections 514B-86 and 514B-87, HRS, the terms and conditions of the purchaser's contract for sale, and applicable common law.

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*This material can be made available for individuals with special needs. Please call the Senior Condominium Specialist at (808) 586-2643 to submit your request.*

This Amendment has not been prepared or issued by the Real Estate Commission or any other governmental agency. The issuance by the Commission of an effective date for this amendment to the Developer's Public Report (1) does not mean that the Commission approves or disapproves of the project; (2) does not mean that the Commission thinks that either all material facts, material changes, or pertinent changes about the project have been fully or adequately disclosed; and (3) is not the Commission's judgment of the value or merits of the project.

The law defines "material facts" to mean any fact, defect, or condition, past or present that to a reasonable person, would be expected to measurably affect the value of the project, unit, or property being offered or proposed to be offered for sale.

This amendment may be used by the Developer for promotional purposes only if it is used with the last Developer's Public Report in its entirety.

Prospective purchasers and purchasers are encouraged to read this amendment carefully and to seek professional advice.

Summary of Changes from Earlier Developer's Public Report are Described Beginning on the Next Page

Summary of Changes from Earlier Developer's Public Report:

This summary contains a general description of the changes, if any, made by the developer since the last Developer's Public Report was issued an effective date. It is not necessarily all inclusive. Prospective purchasers and purchasers must read this amendment together with the last Developer's Public Report with the effective date as noted on the top of page 1 if they wish to know the specific changes that have been made.

Changes made are as follows (include a description of what the change is and page number and or exhibit alphabet or number; additional pages may be used):

Page 5, Section 1.12 – The title report was updated on January 9, 2009 and the updated encumbrances on title are noted in the revised Exhibit "F".

Page 9, Section 2.2 – The Project Broker changed from S & P Destination Properties, Inc. to Gameplan Resort Solutions LLC.

Page 10, Section 3.1 – A Third Amendment to Declaration was recorded to reflect clarification in the number of freehold estates to be consistent with other Project Documents from (from 134 to 135 units) and to evidence the filing of the Architect's As-Built Certificate.

Page 13, Section 5.3 was amended to reflect mechanics' liens, which will be released for each unit prior to closing.

Changes continued:

A large, empty rectangular box with a thin black border, occupying the central portion of the page. It is intended for users to list changes or provide additional information.

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The Developer declares subject to the penalties set forth in Section 5148-69, HRS that this project continues to conform to the existing underlying county zoning for the project, zoning and building ordinances and codes and all applicable permitting requirements adopted by the county in which the project is located, all in accordance with Sections 5148-5 and 32(a) (13), HRS.

For any conversion, if any variances have been granted, they are specified in Section 1.14 of this report as amended, and, if purchaser deposits are to be used by the Developer to cure any violations of zoning, permitting requirements or rules of the county in which the project is located, the violation is specified in Section 1.15 of this report as amended, along with the requirements to cure any violation, and Section 5.5 specifies the date by which the cure will be completed.

The Developer hereby certifies that all the information contained in this report as amended and the exhibits attached to this report (if any) as amended and all documents to be furnished by the Developer to purchasers concerning the project have been reviewed by the Developer and are, to the best of the Developer's knowledge, information and belief, true, correct and complete. The Developer hereby agrees promptly to amend this report as amended to report and include either or all material facts, material or pertinent changes to any information contained in or omitted from this report and to file annually a report to update the material contained in this report as amended at least 30 days prior to the anniversary date of the effective date of this report.

**W2005 KAPALUA/GENGATE HOTEL REALTY, L.L.C.,**  
a Delaware limited liability company

By: W2005 Kapalua/Gengate Hotel Senior Mezzanine, L.L.C.,  
a Delaware limited liability company, its managing member


By: W2005 Kapalua/Gengate Hotel Mezzanine, L.L.C.,  
a Delaware limited liability company,  
its managing member

By: W2005 Kapalua/Gengate Hotel Holdings, L.L.C.,  
a Delaware limited liability company,  
its managing member

By: Gengate Kapalua Holdings GP, LLC,  
a Delaware limited liability company,  
administrative member

By: Gencom Kapalua GP, LLC,  
a Delaware limited liability company,  
its managing member

Date: 2/11/09

By:   
Name (Print): Thomas D. Bezold  
Title: Vice President

Distribution:

Department of Finance, County of Maui

Planning Department, County of Maui

**\*Must be signed for a corporation by an officer; for a partnership or limited liability partnership (LLP) by the general partner; for a limited liability company (LLC) by the manager or an authorized member; and for an individual by the individual.**

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## 1.9 Common Elements

**Common Elements:** Common elements are those parts of the condominium project other than the individual units and any other real estate for the benefit of unit owners. Although the common elements are owned jointly by all unit owners, those portions of the common elements that are designated as limited common elements (see Section 1.10 below) may be used only by those units to which they are assigned. In addition to the common facilities described in Section 1.8 above, the common elements for this project, as described in the Declaration, are set forth below.

Described in Exhibit "D"

Described as follows:

Common Element	Number
Elevators	19
Stairways	14
Trash Chutes	0

## 1.10 Limited Common Elements

**Limited Common Elements:** A limited common element is a portion of the common elements that is reserved for the exclusive use of one or more but fewer than all units in the project.

Described in Exhibit "E".

Described as follows:

## 1.11 Special Use Restrictions

The Declaration and Bylaws may contain restrictions on the use and occupancy of the units. Restrictions for this project include, but are not limited to, those described below.

X	Pets: As described in House Rules
X	Number of Occupants: As described in House Rules
X	Other: There are numerous additional restrictions on the use and occupancy of the units set forth in the Declaration. Purchaser should make careful review of such provisions.
	There are no special use restrictions.

## 1.12 Encumbrances Against Title

An encumbrance is a claim against or a liability on the property or a document affecting the title or use of the property. Encumbrances may have an adverse effect on the property or your purchase and ownership of a unit in the project. Encumbrances shown may include blanket liens which will be released prior to conveyance of a unit (see Section 5.3 on Blanket Liens).

Exhibit "F" describes the encumbrances against title contained in the title report described below.

Date of the title report: January 9, 2009

Company that issued the title report: First American Title Company, Inc.

## 2. PERSONS CONNECTED WITH THE PROJECT

<b>2.1 Developer</b>	Name: W2005 Kapalua/Gengate Hotel Realty, L.L.C. c/o Gencom Group Business Address: 801 Brickell Avenue, Penthouse 2 Miami, Florida 33131  Business Phone Number: (305) 442-9808 E-mail Address: info@gencomgrp.com
Names of officers and directors of developers that are corporations; general partners of a partnership; partners of a limited liability partnership (LLP); or a manager and members of a limited liability company (LLC) (attach separate sheet if necessary).	See attached Sheet 9a
<b>2.2 Real Estate Broker</b>	Name: Gameplan Resort Solutions LLC Business Address: 5 Miracle Strip Loop, Suite 13 Panama City Beach, FL 32407  Business Phone Number: (850) 249-8125 E-mail Address: contact@gameplanrs.com
<b>2.3 Escrow Depository</b>	Name: First American Title Company, Inc. Business Address: 1177 Kapiolani Boulevard Honolulu, Hawaii 96814  Business Phone Number: (808) 536-3866
<b>2.4 General Contractor</b>	Name: Ledcor US Pacific Business Address: 1001 Bishop Street, Pauahi Tower, Suite 1250 Honolulu, Hawaii 96813  Business Phone Number: (808) 540-0777
<b>2.5 Condominium Managing Agent</b>	Name: The Ritz-Carlton Hotel Company, LLC Business Address: 4445 Willard Avenue, Suite 800 Chevy Chase, Maryland 20815  Business Phone Number: (301) 547-4700
<b>2.6 Attorney for Developer</b>	Name: Imanaka Kudo & Fujimoto Attn: Mitchell Imanaka, Esq./ Nikki Senter, Esq. Business Address: 745 Fort Street, 17 <sup>th</sup> Floor Honolulu, Hawaii 96813  Business Phone Number: (808) 521-9500

### 3. CREATION OF THE CONDOMINIUM AND CONDOMINIUM DOCUMENTS

A condominium is created by recording in the Bureau of Conveyances (Regular System) or filing in the Office of the Assistant Registrar of the Land Court, or both, a Declaration of Condominium Property Regime, a Condominium Map and the Bylaws of the Association of Unit Owners. The Condominium Property Act (Chapter 514B, HRS), the Declaration, Bylaws and House Rules control the rights and obligations of the unit owners with respect to the project and the common elements, to each other, and to their respective units.

#### 3.1 Declaration of Condominium Property Regime

The Declaration of Condominium Property Regime contains a description of the land, buildings, units, common interests, common elements, limited common elements, and other information relating to the condominium project.

Land Court or Bureau of Conveyances	Date of Document	Document Number
Bureau of Conveyances	June 29, 2007	2007-160950

##### Amendments to Declaration of Condominium Property Regime

Land Court or Bureau of Conveyances	Date of Document	Document Number
Bureau of Conveyances	January 31, 2008	2008-016362
Bureau of Conveyances	February 26, 2008	2008-033495
Bureau of Conveyances	June 18, 2008	2008-100330

#### 3.2 Bylaws of the Association of Unit Owners

The Bylaws of the Association of Unit Owners govern the operation of the condominium project. They provide for the manner in which the Board of Directors of the Association of Unit Owners is elected, the powers and duties of the Board, the manner in which meetings will be conducted, whether pets are prohibited or allowed and other matters that affect how the condominium project will be governed.

Land Court or Bureau of Conveyances	Date of Document	Document Number
Bureau of Conveyances	July 13, 2007	2007-160951

##### Amendments to Bylaws of the Association of Unit Owners

Land Court or Bureau of Conveyances	Date of Document	Document Number

#### 3.3 Condominium Map

The Condominium Map contains a site plan and floor plans, elevations and layout of the condominium project. It also shows the floor plan, unit number and dimensions of each unit.

Land Court Map Number	
Bureau of Conveyances Map Number	4513
Dates of Recordation of Amendments to the Condominium Map: March 4, 2008	

## 5. SALES DOCUMENTS

### 5.1 Sales Documents Filed with the Real Estate Commission

Sales Documents on file with the Commission include, but are not limited to, the following:	
X	Specimen Sales Contract Exhibit "I" contains a summary of the pertinent provisions of the sales contract. Including but not limited to any rights reserved by the Developer.
X	Escrow Agreement dated: June 27, 2007 Name of Escrow Company: First American Title Company, Inc. Exhibit "J" contains a summary of the pertinent provisions of the escrow agreement.
X	Other: Exhibit "L" contains a summary of the pertinent provisions of the specimen Unit Deed and Exhibit "M" contains a summary of Special Use Restrictions.

### 5.2 Sales to Owner-Occupants

If this project contains three or more residential units, the Developer shall designate at least fifty percent (50%) of the units for sale to Owner-Occupants.

	The sales of units in this project are subject to the Owner-Occupant requirements of Chapter 514B.
	Developer has designated the units for sale to Owner-Occupants in this report. See Exhibit _____.
	Developer has or will designate the units for sale to Owner-Occupants by publication.

### 5.3 Blanket Liens

Blanket Liens: A blanket lien is an encumbrance (such as a mortgage) on the entire condominium project or more than one unit that secures some type of monetary debt (such as a loan) or other obligation. Blanket liens (except for improvement district or utility assessments) must be released as to a unit before the developer conveys the unit to a purchaser. The purchaser's interest will be affected if the developer defaults and the lien is foreclosed prior to conveying the unit to the purchaser.

<input type="checkbox"/>	There are <u>no blanket liens</u> affecting title to the individual units.
<input checked="" type="checkbox"/>	There are <u>blanket liens</u> that may affect title to the individual units.

Type of Lien	Effect on Purchaser's Interest and Deposit if Developer Defaults or Lien is Foreclosed Prior to Conveyance
Mortgage	Purchaser may lose the right to buy the unit, but will receive refund of his/her deposit. This means, among other things, that if Developer defaults under the mortgage, the mortgagee may take over the Project, cancel the sales contracts and refund the Buyer's deposits, less escrow cancellation fees, and the Buyer shall have no further interest in the Project.
Mechanics' Liens	See Exhibit "F" attached hereto. Note that the Developer will obtain partial releases for the unit prior to closing.

**EXHIBIT "F"**

**ENCUMBRANCES AGAINST TITLE**

1. Title to all mineral and metallic mines reserved to the State of Hawaii.
2. AS TO PARCEL ONE (AS DESCRIBED IN THE DECLARATION, AS AMENDED) ONLY:
  - a. Reservations of minerals, surface waters and ground waters contained in Exchange Deed dated January 20, 1976, recorded at said Bureau in Book 11649 at Page 208.
  - b. Reservations of minerals, surface and ground waters, and prehistoric and historic remains contained in Quitclaim Deed dated October 14, 1982, recorded at said Bureau in Book 16659 at Page 294, Quitclaim Deed dated June 24, 1982, recorded at said Bureau in Book 19749 at Page 343, and Quitclaim Deed dated June 24, 1986, recorded at said Bureau as Document No. 90-065173.
  - c. Lease or rights of way in favor of Maui Electric Company, Limited, and GTE Hawaiian Telephone Company Incorporated, now Verizon Hawaii, Inc., dated October 9, 1961, recorded at said Bureau in Book 4162 at Page 301, for a term of 35 years commencing October 9, 1961, and thereafter from year to year until terminated.
  - d. A grant of easement for electrical and incidental purposes in favor of Maui Electric Company, Limited and GTE Hawaiian Telephone Company Incorporated, now Hawaiian Telcom, Inc., dated December 30, 1981, recorded at said Bureau in Book 16169 at Page 516.
  - e. Terms and conditions contained in that certain Subdivision Agreement (Large Lots) dated August 10, 1990, recorded at said Bureau as Document No. 90-124627.
  - f. Terms and conditions of that certain Private Water System Agreement dated October 28, 1997, recorded at said Bureau as Document No. 98-009964.
  - g. Sewerline Easement 1 in favor of Kapalua Land Company, Ltd., containing an area of 3,025 square feet, more particularly described on the survey of Reed M. Ariyoshi, Licensed Professional Surveyor, dated April 15, 1999.
  - h. Terms and conditions of that certain Private Water System Agreement dated July 17, 1986, recorded at said Bureau in Book 19693 at Page 171.
  - i. A grant of easement for electrical and utility purposes in favor of Maui Electric Company, Limited and Hawaiian Telcom, Inc., recorded February 19, 2008 at said Bureau as Document No. 2008-023907.
3. AS TO PARCEL TWO (AS DESCRIBED IN THE DECLARATION, AS AMENDED) ONLY:
  - a. Shoreline setback lines as they may be established by the State Land Use Commission or by the County pursuant to Sections 205A-41 to 205A-43.6, inclusive, of the Hawaii Revised Statutes.
  - b. A grant of easement for utility and incidental purposes in favor of Maui Electric Company, Limited and GTE Hawaiian Telephone Company Incorporated, now Verizon Hawaii, Inc., dated May 7, 1976, recorded at said Bureau in Book 11443 at Page 479, as amended by instruments dated August 5, 1981, recorded at said Bureau in Book 16030 at Page 319, and dated August 21, 1985, recorded at said Bureau in Book 18998 at Page 100.
  - c. Terms and conditions contained in that certain Private Water System Agreement dated September 11, 1985, recorded at said Bureau in Book 18936 at Page 48.

- d. Terms and conditions of that certain Subdivision Agreement (Large Lots) dated October 10, 1985, recorded at said Bureau in Book 19029 Page 227.
  - e. Terms and conditions of that certain Private Water System Agreement dated August 5, 1991, recorded at said Bureau as Document No. 91-115967.
4. Terms, conditions, reservations, covenants, conditions and restrictions as contained in Declaration of Covenants dated December 29, 1976, recorded at said Bureau in Book 11922 at Page 26, as amended and restated by instrument dated September 30, 1987, recorded at said Bureau in Book 21185 at Page 173.

Said Declaration was supplemented by instruments dated April 5, 1990, recorded at said Bureau as Document No. 90-049427, dated September 12, 1990, recorded at said Bureau as Document No. 90-142160, and dated May 23, 1991, recorded at said Bureau as Document No. 91-067724.

Said Declaration was amended by instruments dated July 18, 1989, recorded at said Bureau in Book 23623 at Page 18, dated December 6, 1989, recorded at said Bureau in Book 24012 at Page 17, dated October 18, 1990, recorded at said Bureau as Document No. 90-164621, and dated October 4, 1999, recorded at said Bureau as Document No. 99-160407.

5. Terms, provisions, reservations, covenants, conditions and restrictions, but deleting any of the aforementioned indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, national origin, sexual orientation, marital status, ancestry, source of income or disability, to the extent such covenants, conditions or restrictions violate Title 42, Section 3604(c), of the United States Codes or Chapter 515 of the Hawaii Revised Statutes, as contained in the document entitled Unilateral Agreement and Declaration for Conditional Zoning, recorded October 11, 1989 at said Bureau in Book 23752 at Page 583.
6. Terms, provisions, reservations, covenants, conditions and restrictions, but deleting any of the aforementioned indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, national origin, sexual orientation, marital status, ancestry, source of income or disability, to the extent such covenants, conditions or restrictions violate Title 42, Section 3604(c), of the United States Codes or Chapter 515 of the Hawaii Revised Statutes, as contained in the document entitled Private Water System Agreement, recorded September 19, 1990 at said Bureau as Document No. 90-144995.

Said Agreement was amended by instrument dated December 1, 1992, recorded at said Bureau as Document No. 93-003835.

7. Terms and conditions contained in that certain Amended and Restated Golf Course Use Agreement dated September 27, 2000, effective as of September 27, 2000, made by and between Maui Land and Pineapple Company, Inc., "Owner", NI Hawaii Resort, Inc., "Hotel Owner", and The Ritz-Carlton Hotel Company, L.L.C., "Operator", recorded at said Bureau as Document No. 2000-135418.

Said amended and restated Golf Course Use Agreement was assigned to W/2005 Kapalua/Gengate Hotel Realty, L.L.C., a Delaware limited liability company, by mesne Assignment dated March 13, 2006, recorded March 21, 2006 at said Bureau as Document No. 2006-053675.

Said Golf Course Use Agreement was amended and restated by that certain Second Amended and Restated Golf Course Agreement dated March 27, 2007, a Memorandum of Second Amended and Restated Golf Course Use Agreement recorded April 12, 2007 at said Bureau as Document No. 2007-065256.

8. Terms, provisions, reservations, covenants, conditions and restrictions, but deleting any of the aforementioned indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, national origin, sexual orientation, marital status, ancestry, source of income or disability, to the extent such covenants, conditions or restrictions violate Title 42, Section 3604(c), of the United States Codes or Chapter 515 of the Hawaii Revised Statutes, as contained in the document entitled Subdivision Agreement (Large Lots), recorded May 2, 2000 at said Bureau as Document No. 2000-059492 .

9. Terms and conditions to that certain Grant of Encroachment Licenses Agreement dated January 4, 2001, made by and between Maui Land & Pineapple Company, Inc., and RCK Hawaii, LLC dba RCK Hawaii-Maui, recorded January 10, 2001 at said Bureau as Document No. 2001-003568.
10. Terms and conditions of that certain Memorandum of Management Agreement dated January 31, 2001, made by and between RCK Hawaii, LLC dba RCK Hawaii-Maui, and The Ritz-Carlton Hotel Company, L.L.C., recorded February 8, 2001 at said Bureau as Document No. 2001-018414.
11. The terms and provisions contained in the unrecorded Commercial Facility License Agreement dated July 28, 2004, made by and between The Ritz-Carlton Hotel Company, L.L.C., dba The Ritz-Carlton, Kapalua, "Licensor", and Cellco Partnership, a Delaware general partnership, d/b/a Verizon Wireless, "Licensee", which Agreement licenses to Licensee a portion of the Licensor's property for a term of five years, subject to certain rights to extend, as disclosed by Memorandum of License dated July 28, 2004 recorded August 10, 2004 at said Bureau as Document No. 2004-163791.
12. An unrecorded Hotel Space Lease Agreement dated on or about April 27, 2006, executed by The Ritz-Carlton Hotel Company, LLC, a Delaware limited liability company ("Operator"), solely in its capacity as operator acting on behalf of W2005 Kapalua/Gengate Hotel Realty, L.L.C., a Delaware limited liability company ("Landlord"), as Lessor, and The Ritz Carlton Development Company, Inc., a Delaware corporation ("Tenant") , as Lessee, for a term as set forth therein, as disclosed by a Memorandum of Hotel Space Lease, recorded May 22, 2006 at said Bureau as Document No. 2006-095166 .
13. A Grant of Easement for waterline easement, in favor of Kapalua Water Company, Ltd., a Hawaii corporation, recorded March 27, 2007 at said Bureau as Document No. 2007-054520.
14. A Grant of Easement for wastewater easement, in favor of Kapalua Waste Treatment Company, Ltd., a Hawaii corporation, recorded March 27, 2007 at said Bureau as Document No. 2007-054521.
15. Terms, provisions, reservations, covenants, conditions and restrictions, but deleting any of the aforementioned indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, national origin, sexual orientation, marital status, ancestry, source of income or disability, to the extent such covenants, conditions or restrictions violate Title 42, Section 3604(c), of the United States Codes or Chapter 515 of the Hawaii Revised Statutes, as contained in the Declaration of Covenants, Conditions and Restrictions with Authorization of Time Share and Transient Vacation Rentals recorded March 27, 2007 at said Bureau as Document No. 2007-054524.
16. The terms and provisions contained in the Memorandum of Option and Right of First Refusal made by and between W2005 Kapalua/Gengate Hotel Realty, L.L.C., a Delaware limited liability company ("Purchaser"), Maui Land & Pineapple Company, Inc., a Hawaii corporation ("Seller"), and W2005 Kapalua/Gengate Hotel Holdings, L.L.C., a Delaware limited liability company ("Company") recorded March 27, 2007 at said Bureau as Document No. 2007-054526.
17. Terms, provisions, reservations, covenants, conditions and restrictions, but deleting any of the aforementioned indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, national origin, sexual orientation, marital status, ancestry, source of income or disability, to the extent such covenants, conditions or restrictions violate Title 42, Section 3604(c), of the United States Codes or Chapter 515 of the Hawaii Revised Statutes, as contained in the Warranty Deed with Reservations and Covenants recorded March 27, 2007 at said Bureau as Document No. 2007-054527.
18. Matters shown on the ALTA/ACSM Land Title Survey dated February 28, 2007, prepared by Ronald M. Fukumoto, Licensed Professional Land Surveyor No. 5451, to-wit:
  - a. Apparent encroachments from Lot 2A-1 onto adjoining properties:
    - i. Portions of (2)-auto sprinkler and standpipe on the northeasterly side of the property is within Lot 1D.

- ii. Portion of rock wall along the westerly side of the property is within Lot 1A.
    - iii. Portion of concrete masonry unit wall along the westerly side of the property is within Lot 1A.
    - iv. Portion of the PVC drain pipe along the northwesterly side of the property is within Lot 1A.
    - v. Portion of MECO Box along the northerly side of the property is within Lot A-7-C-2.
  - b. Apparent encroachment from Lot 1F onto Lot 2A-1:
    - i. Portion of sidewalk along the southerly side of the property is within Lot 2A-1.
  - c. Apparent encroachment from Lot 1B onto Lot 2A-1:
    - i. Portion of propane tank along the westerly side of property is within Lot 2A-1.
  - d. Apparent encroachment from Lot 1A onto Lot 2A-1:
    - i. Portion of AC parking lot along the westerly side of property is within Lot 2A.
  - e. Apparent encroachment from Lot B onto Lot A-7-C-1:
    - i. Portions of (2)-fences along the easterly side of the property are within Lot A-7-C-1.
  - f. Apparent encroachment from Lot 2-A-2 into Lot A-7-C-1:
    - i. Portion of (2)-tennis courts along the northeasterly side of the property is within Lot A-7-C-1.
19. A mortgage to secure an original principal indebtedness of \$232,426,079.00, and any other amounts or obligations secured thereby.
- Dated: March 27, 2007  
 Mortgagor: W2005 Kapalua/Gengate Hotel Realty, L.L.C., a Delaware limited liability company  
 Mortgagee: Lehman Brothers Holdings Inc., a Delaware corporation  
 Recorded March 27, 2007 at said Bureau as Document No. 2007-054528.
20. The Assignment of Leases and Rents in favor of Lehman Brothers Holdings Inc., a Delaware corporation, as additional security for the payment of the indebtedness in the amount of \$232,426,079.00, which was recorded March 27, 2007 at said Bureau as Document No. 2007-054529.
21. A financing statement
- Debtor: W2005 Kapalua/Gengate Hotel Realty, L.L.C., a Delaware limited liability company  
 Secured Party: Lehman Brothers Holdings Inc.  
 Recorded March 27, 2007 at said Bureau as Document No. 2007-054530.
22. The terms and provisions contained in the Subordination, Non-Disturbance and Attornment Agreement recorded March 27, 2007 at said Bureau as Document No. 2007-054531.
23. Master Declaration of Covenants, Conditions and Restrictions for Honokahua Beach Hotel and Residences dated June 29, 2007, recorded at said Bureau as Document No. 2007-160949.

24. Declaration of Condominium Property Regime of Honokahua Beach Hotel and Condominium Map dated June 29, 2007, recorded at said Bureau as Document No. 2007-160950.

The foregoing Declaration was amended by instrument recorded on February 4, 2008 at said Bureau as Document No. 2008-016362 and by instrument recorded on March 4, 2008 at said Bureau as Document No. 2008-033495 and by instrument recorded on June 20, 2008 at said Bureau as Document No. 2008-100330.

25. Condominium Map No. 4513.

26. Bylaws of the Association of Honokahua Beach Hotel dated July 13, 2007, recorded at said Bureau as Document No. 2007-160951.

27. The terms and provisions contained in the Hold Harmless Agreement made by and between the County of Maui and W2005 Kapalua/Gengate Hotel Realty, L.L.C. recorded January 25, 2008 at said Bureau as Document No. 2008-011911.

28. Application for Mechanic's and Materialman's Lien, M.L. No. 08-1-000022, in the Matter of Ledcor-US Pacific Construction LLC, "Lienor" vs. W2005 Kapalua Gengate Hotel Realty, L.L.C., "Owner", filed on August 22, 2008 in the Second Circuit Court of the State of Hawaii.

A Notice of Pendency of Action filed on August 22, 2008, of which a certified copy of said Notice was recorded September 17, 2008 as Regular System Document No. 2008-145833 of Official Records.

29. Application for Mechanic's and Materialman's Lien, M.L. No. 08-1-000023, KDI Elements, "Lienor" vs. W2005 Kapalua Gengate Hotel Realty, L.L.C., "Owner", and Ledcor-US Pacific Construction, LLC, "Contractor", filed on August 22, 2008 in the Second Circuit Court of the State of Hawaii.

30. Application for Mechanic's and Materialman's Lien, M.L. No. 08-1-000024, in the matter of Clarin Group, Inc., "Lienor" vs. w2005 Kapalua Gengate Hotel Realty, L.L.C., "Owner", Ledcor-US Pacific Construction LLC, "Contractor" and New World Millworks, "Contractor", filed on August 22, 2008 in the Second Circuit Court of the State of Hawaii.

31. Real property taxes as may be due and owing on both parcels. Check with the county tax assessor for further information.

THE ABOVE SUMMARY IS NOT INTENDED TO BE A THOROUGH AND EXHAUSTIVE EXPLANATION OF ALL THE ENCUMBRANCES ON TITLE CONTAINED IN THE UPDATED PRELIMINARY TITLE REPORT FOR THE PROJECT ("TITLE REPORT"). WHILE A PURCHASER CAN USE THIS SUMMARY AS A GENERAL SUMMARY OF RIGHTS AND OBLIGATIONS UNDER THE TITLE REPORT, PURCHASER MUST REFER TO THE TITLE REPORT PURCHASER RECEIVES UPON CLOSING TO DETERMINE THE MOST UPDATED ENCUMBRANCES AFFECTING THE PROJECT. IF ANY CONFLICT OR DIFFERENCE EXISTS BETWEEN THIS SUMMARY AND ANY TITLE REPORT, THE UPDATED TITLE REPORT RECEIVED UPON CLOSING WILL CONTROL.